



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: February 8, 2011
Appeal #Z-01-11

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Subject: Petition for a dimensional variance (Z-01-11) to permit the construction of an elevator to the existing Farley-Estes & Dowdle Funeral Home approximately 28.2' from a front property line at 105 Capital Avenue NE.

Summary

This report addresses a petition from John Dowdle, President, Farley-Estes & Dowdle Funeral Home seeking approval of a Dimensional Variance (Z-01-11), to construct an elevator approximately 28.2' from a front property line at 105 Capital Avenue NE.

Background/Project Information

The subject site is located at 105 Capital Avenue NE. The subject lot is located on the corner of Capital Avenue NE and North Avenue and is located in the O-1 "Office" District. The minimum lot standards for the O-1 zone include a minimum lot width of 60 feet and a minimum lot area of 5,000 square feet. The subject lot is approximately 100' x 300' and meets the minimum width and lot area standard for the O-1 zone. However, the subject lot has frontage on three sides, and by definition, has three front yards. The funeral home was built in 1937 and there is little room for expansion in any direction, other than to the north. The request is to construct an elevator with a 10' x 20' footprint in the south west corner of the building along North Avenue to bring the building into ADA compliance. The zoning ordinance states that structures must maintain a 30' setback in front yards of properties located in the O-1 "Office" district.

Legal Description

ASSRS REPLAT OF MERRITTS SUP TO BLK 2 LOTS 185 THRU 187

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, January 20, 2011 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on January 14, 2011, to 25 property owners and occupants located within 300 feet of the subject parcel. Planning staff has received no comments relative to this request.



Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is generally located in a well established downtown/city setting with a mix of uses surrounding the site.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.

Analysis

The Appellant is requesting a front yard setback variance along North Avenue that would authorize the construction of an elevator approximately 28.2' from the west, front property line, contrary to limitations outlined in chapter 1278 of the Planning and Zoning Code. The Appellant has stated in the supporting material in the form of a cover letter that the elevator is a requirement of the state in order to make the building ADA compliant. The Appellant has consulted with an architect and construction company and have concluded that the proposed location of the elevator on the west side of the building along North Avenue is the best location for the elevator. The Appellant has supplied additional reasons supporting the request for appeal and they are included with the application and part of this report. Photos of the proposed location of the structure and a drawing of what the proposed elevator might look like have been provided.

Is there something unique about this lot or property that makes relief necessary? We would agree that by definition the lot has three front yards. We would also suggest that almost any addition to the funeral home would have to occur on the north part of the building, not necessarily the best location due to the interior layout of the building.



105 Capital Ave NE



Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals approve the Dimensional Variance (Z-01-11) based on the following findings contained in this staff report.

- 1) Staff finds that there is unusual and practical difficulty specific to the property in question. We understand that the lot meets the width and area standards for the O-1 district; however, the lot has three front yards and the interior layout of the funeral home makes ADA additions to the north portion of the building unreasonable.
- 2) Granting the variance and thereby permitting the applicant to move forward with the project in spite of the fact it is not in compliance with the zoning ordinance will not seriously affect any adjoining property or the general welfare of the public. Furthermore, we have not heard from any neighbors objecting to the project.
- 3) Staff believes that if the variance in question is granted the property will still be in harmony with the general purpose and intent of the O-1 zoning district in that many of the older city buildings have been built closer to the road than what current ordinance allows.
- 4) Staff believes that if the Zoning Board grants the variance, the setback waiver will not serve merely as a convenience to the applicant and will alleviate some demonstrable practical difficulty so great as to warrant a variation to the Master Plan.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met, as well.

- 1) Staff believes that the Appellant has clearly demonstrated that practical difficulty will in fact exist if the variance is not granted. The fact that the property has three front yards and the interior layout of the existing funeral home makes placing an addition to the north of the building in conformance with ordinance standards.
- 2) Staff does not believe the appellant has created the practical difficulty associated with this request. In fact, the elevator will bring the building into ADA compliance.
- 3) Staff believes that the practical difficulties are exceptional and peculiar to the property of the person requesting the variance for the reasons stated in item #1 above.
- 4) Staff believes that the alleged practical difficulties result from conditions which do not generally exist throughout the City in that the buildings city setting and location with three front yards makes this particular property unlike most within the city.

- 5) The Appellant has furnished documentation to indicate that practical difficulties do in fact exist. Staff believes that the furnished documentation relative to unique property conditions meet the standards outlined in the Zoning Code authorizing the Board to grant the variance.
- 6) Staff does not believe the term "practical difficulty" is deemed financial hardship in this case.
- 7) Staff believes the alleged practical difficulty which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case.
- 8) Staff believes that by allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Code, the individual practical difficulties that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- 9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- 10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Attachments

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-01-11)
2. A cover letter attached to the application
3. Plan showing the proposed location of the elevator
4. Conceptual drawing of proposed elevator

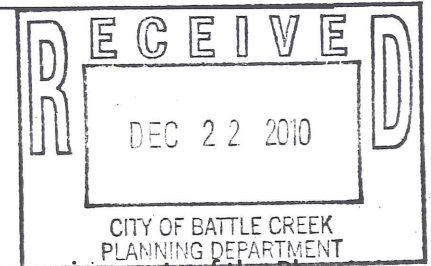
Date _____

Appeal No. _____

Z-01-11

**APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS**

City of Battle Creek, Michigan



An appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: Farley-Estes & Dowdle Funeral Home John Dowdle, president
Address: 105 Capital Avenue N.E. Phone: (269) – 962- 5527

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to: **Erect**
Erect an elevator to serve all three floors of the building, contrary to requirements of Sections
1278.03 (b) of the Planning and Zoning Code, upon the premises known as: Farley-Estes &
Dowdle Funeral Home @ 105 Capital Avenue NE /at the corner of North Avenue, Battle Creek, MI, in
accordance with the plans and/or plat record attached.

The proposed building or use requires Board action in the following areas:
Action to approve an addition of an elevator in an area outside the normal set back requirements.

2.) area(s): approve use of property in a setback area to erect an elevator outside, but attached to the
building and a stairway to provide an emergency or fire exit to the lower level.

Property /Tax I.D. # No, 5370 - 00 - 186 - 0

Size of Lot: Width _____ Dept: _____

Size of Proposed Building: Width 10' Depth 20' Height Approximately 29' or just underneath the peak
of the existing building (see sketch).

The following reasons are presented in support of this appeal (complete each section):

- a.) This property cannot be used in conformance with the ordinance without the requested variance
because:

Numerous scenarios have been brainstormed and discussed at length. Several years ago we tried to do
this project within the confines of the building itself, but because of numerous ADA issues, building
codes, loss of restroom space, and just the configuration of the existing building itself, we could not
come up with an acceptable solution without sacrificing space we use to serve the needs of the families
who select our services.

(b) This problem is due to a unique situation not shared in common with nearby property owners
because: The original building was constructed in the late 1930's without regard to numerous building
codes and ADA requirements now in effect. Because of the configuration of the existing building, the
most reasonable solution to bring the building up to ADA requirements for both the public and office
employees is to place an elevator on the west side of the building.

Some years ago the Presbyterian Church next door built an elevator on the west side of their building and we permitted them to extend that project over the set-back boundaries in order for them to make their building ADA accessible. It has never caused us a problem. Because the original funeral home building is on a corner, the best solution is to place the elevator on the west side of the building.

c.) Granting the variance would not alter the essential character of the area because: The exterior will be designed to match the original aesthetics of the colonial red brick building.

d.) The problem is not self created because: We are trying to reclaim areas of the building that we are not allowed to let the public use since the American With Disabilities' Act went into effect.

e.) **Use Variance Only:** Not applicable

I herby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. In addition, I give permission to the City of Battle Creek's Planning Department staff to access the property, if necessary, to take photographs of the subject of this appeal.

Name of Appellant: Farley-Estes & Dowdle Funeral Home John F. Dowdle, president

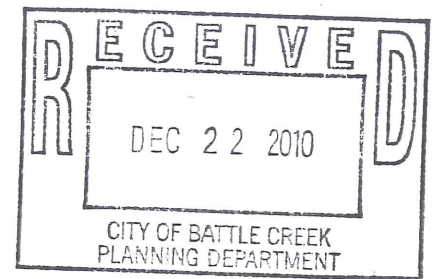
John F. Dowdle, president
Signature of Appellant

Address of Appellant: 105 Capital Avenue N.E., Battle Creek, MI 49017

Farley
ESTES & DOWDLE
Funeral Directors

Battle Creek, Augusta, Richland

105 Capital Avenue, N.E., Battle Creek, Michigan 49017
(269) 962-5527 • Fax (269) 962-1011



December 22, 2010

City of Battle Creek Department of Planning and Zoning
Zoning Board of Appeals
77 East Michigan Avenue, Suite 204
Battle Creek, MI 49017

Dear Members of the Zoning Board of Appeals,

First of all, thank you for your time and consideration.

Here is the short...

What I am requesting is a setback variance to put an elevator on the west side (North Avenue side) of our original building so we can be ADA compliant. That elevator would require approximately 20 feet of space to the west.

Here is a short historical version ...

In 1998 we made an addition on the north side of our building, located at 105 Capital Avenue NE. At that time I went to Lansing, MI and applied for a variance to use all three levels of our building for employees and the public. The Judge's ruling does allow employees to use all three levels, but it does not allow public access. Previous to the addition we had received a variance to use the lower level as a lounge for families to take a break, have some food or just relax a few minutes and the upper level as offices and residence.

When we were denied the variance for the public in 1998, I asked Schweitzer's to see if we could put in a lift in our original building (completed in 1939) to meet ADA requirements. The costs at that time to rearrange the old building were estimated in a range of \$500,000.00 - 800,000.00 depending on what was found when the old building was opened up. Needless to say, we no longer have public access to the lower level where a lounge and two additional public restrooms are located. Since then we have had a secretary have knee replacements and other staff injuries, where a lift or elevator would be very advantageous reaching our upper level area.

Randy Case (from Architecture Pus Deign - 966-9037) and Drew Schweitzer (Schweitzer Construction - 963-1579) have come up with an estimate for this project that would total approximately \$275,000.00 - \$300,000.00.

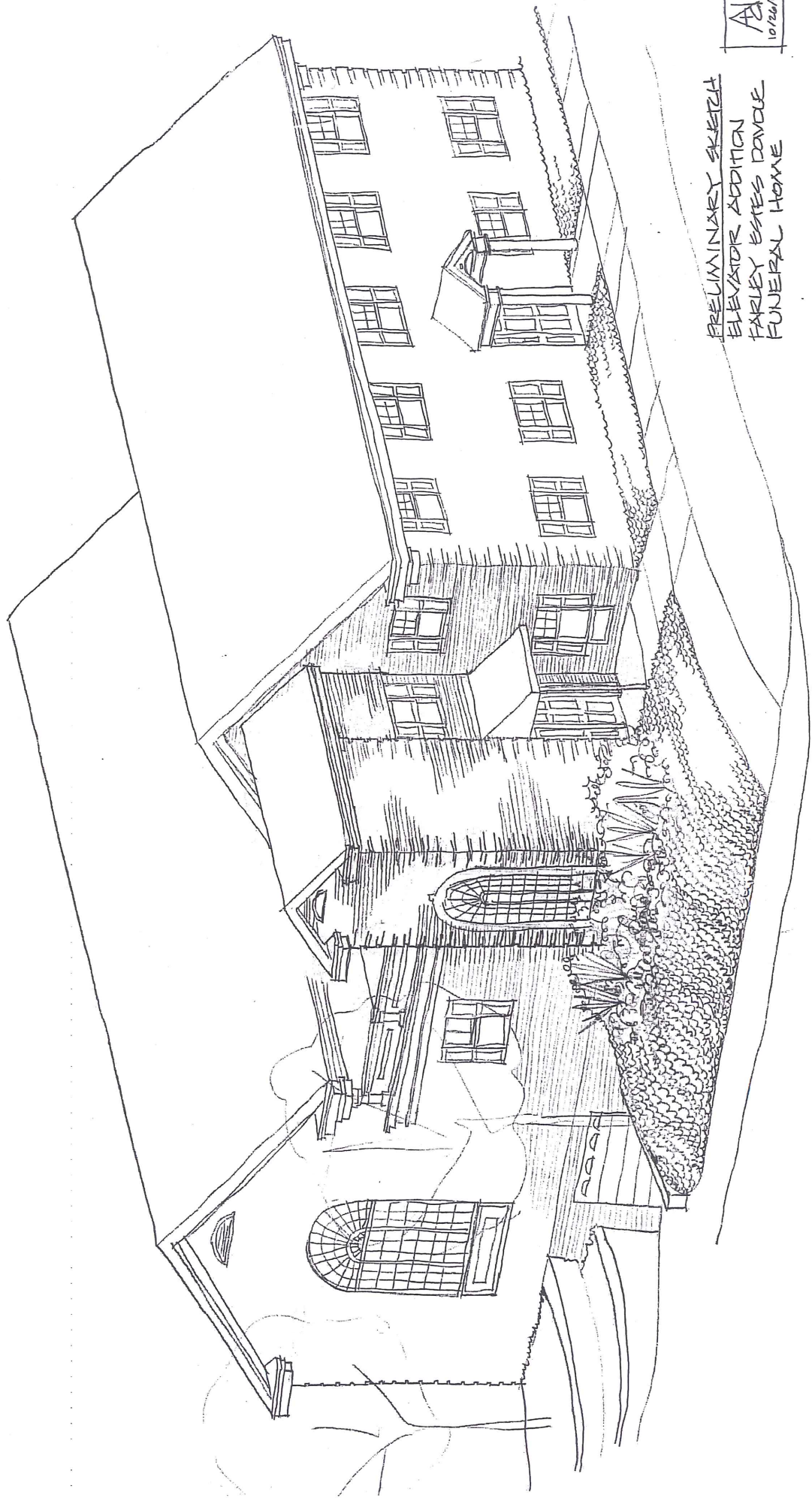
The original building is the area of our business we would like to make ADA compliant. This would allow any handicapped individual access to the lower level and a handicapped staff member access to our upper level. We now have a plan to use those areas and make them 100% ADA compliant. The best solution is to attach an elevator on the west side (North Avenue side) of our original building. I spoke to local Architect Randy Case and he estimated the elevator addition would require approximately an 10' X 20' foot print area (see sketch).

Please feel to contact me to answer any questions you may have or set a time to stop in and review our ideas.

Sincerely,

A handwritten signature in cursive script that reads "John F. Dowdle".

John F. Dowdle



PRELIMINARY SKETCH
ELEVATOR ADDITION
FARLEY ESTATES DOVUE
FUNERAL HOME

AD
10/26/10

